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*Case Caption*

In the  
SUPREME COURT OF THE UNITED STATES

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October Term, 1948

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No. 320

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Joseph G. Battaglia, Arthur G. Becker, et al.,  
*Petitioners,*

vs.

General Motors Corporation, a Delaware Corporation

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No. 321

Frank Holland and Peter J. Zanghi, Individually, Etc.,  
*Petitioners,*

vs.

General Motors Corporation

---

No. 322

---

William S. Hilger, Samuel Ziegler and Joseph J. Villella,  
Individually, Etc.,  
*Petitioners,*

vs.

General Motors Corporation

---

No. 323

---

Walter J. Casheba, Individually, Etc.,  
*Petitioners,*

vs.

General Motors Corporation

**MOTION FOR LEAVE TO FILE BRIEF AS  
AMICUS CURIAE**

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*May it please the Court:*

The undersigned, as counsel for plaintiffs in the case of James J. Thomas, District Director, United Steel Workers of America, et al. vs. Carnegie-Illinois Steel Corporation, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

CHARLES J. MARGIOTTI,  
*Counsel.*

*Statement of Interest***BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI**

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**I. STATEMENT OF INTEREST**

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This Brief has been submitted for and on behalf of the plaintiffs in the case of James J. Thomas, District Director, United Steel Workers of America, et al. vs. Carnegie-Illinois Steel Corporation, which was appealed by the plaintiffs from the adverse final order and decree of the District Court of the United States for the Western District of Pennsylvania, at Civil Action No. 6112, to the United States Circuit Court of Appeals for the Third Circuit, at No. 9603. The facts and questions of law involved are similar to those recited in the captioned cases now before this Court, and, therefore, need not be repeated here. Arguments were heard by the United States Court of Appeals for the third Circuit on October 22, 1948, at which time the Court stated that it was interested in the petition for writs of certiorari filed before this Court in the captioned cases. Inasmuch as the interest involved in the captioned cases are so closely related and similar to those of the plaintiffs in the matters now pending before the United States Court of Appeals for the Third Circuit, the attached Brief is submitted for the consideration of the Court in support of the petition for writs of certiorari requested in the captioned cases.

## II. ARGUMENT

## POINT I.

The provision of the Portal-to-Portal Act purporting to affect the jurisdiction of the Courts cannot serve to validate the deprivation of plaintiffs' rights under the Fifth Amendment.

Congress did not stop with a declaration that employers should be relieved of liability in pending cases of the character here presented. It went further in the Portal-to-Portal Act by providing that no court should have "jurisdiction" to enforce those claims which Congress desired to outlaw.

It has long been established that "jurisdiction" means the power to hear and determine, to make any decision at all (*United States vs. Arredondo*, 6 Pet. 691, 8 L. ed. 547; *Grignon's Lessee vs. Astor*, 2 How. 319, 11 L. ed. 283; *United States vs. O'Grady*, 22 Wall. 641, 22 L. ed. 772; *State of Rhode Island vs. Commonwealth of Massachusetts*, 12 Pet. 657, 9 L. ed. 1233). And that power—the power even to proceed to consider an issue—is to be sharply distinguished from the power to afford relief upon the showing of a particular set of facts. The latter involves a determination on the merits, and the power to make such a determina-

*Argument*

tion in itself imports the existence of jurisdiction. As the Court said, in *Ex Parte Watkins*, 7 Pet. 568, 8 L. ed. 786, 788:

“But the jurisdiction of the Court can never depend upon its decision upon the merits of the case brought before it but upon its right to hear and decide it at all.”

And again, in *General Investment Company vs. New York Central Railroad Company*, 271 U. S. 228, 46 S. Ct. 496, 70 L. ed. 920:

“By jurisdiction we mean power to entertain the suit, consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff’s right to the relief sought. There may be jurisdiction and yet an absence of merits (*The Fair vs. Kohler Die & Specialty Co.*, 228 U. S. 22, 25, 57 Law ed. 716, 717, 33 Sup. Ct. Rep. 410; *Geneva Furniture Mfg. Co. vs. S. Karpen & Bros.*, 238 U. S. 254, 258, 59 Law ed. 1295, 1297, 35 Sup. Ct. Rep. 788) as where the plaintiff seeks preventive relief against a threatened violation of law of which he has no right to complain, either because it will not injure him or because the right to invoke such relief is lodged exclusively in an agency charged with the duty of representing the public in the matter. Whether a plaintiff seeking such relief has the requisite standing is a question going to the merits, and its determination is an exercise of jurisdiction. (*Illinois C. R. Co. vs. Adams*, 180 U. S. 28, 34, 45 Law ed. 410, 412, 21 Sup. Ct. Rep. 251; *Venner vs. Great Northern R. Co.*, 209 U. S. 24, 34, 52, Law ed. 666, 669, 28 Sup. Ct.

*Argument*

Rep. 328). If it be resolved against him, the appropriate decree is a dismissal for want of merits, not for want of jurisdiction."

Congress may not obliterate the distinction between jurisdiction and the merits of a case simply by the use of a phrase. Where it, in truth, is seeking to establish a rule of decision, its employment of a "jurisdictional" reference will be given no effect by the courts. It is well to recall again at this point the language of the Court in *United States vs. Klein*, 13 Wall. 128, 20 L. ed. 519, 525:

"It is evident from this statement that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending prescribed by Congress. The court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

"It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power."

There is no doubt as to the Congressional purpose in the Portal-to-Portal Act of 1947. For here, what Congress purported, in Section 2c of the Act, to establish as a jurisdictional test was, at the very same time and in specific terms, also made a rule for the determination of liability (Sec. 2a).

First of all, it was Congress's intent, in passing this Act to avoid the effect of certain decisions of this Court—decisions which declared a rule of liability and not of

### Argument

jurisdiction. And what has thus been declared a rule of liability cannot suddenly be changed into the foundation for the exercise of any judicial power at all.

Secondly, if the issue of an employer's liability under the Act were in fact jurisdictional, a determination thereunder would be subject to collateral attack (e. g., *Elliott vs. Piersol's Lessee*, 1 Pet. 328, 7 L. ed. 164; *Johnson vs. Manhattan Railway Co.*, 289 U. S. 479, 53 S. Ct. 721, 77 L. ed. 1331). It is scarcely conceivable that Congress intended to place a judgment under the Portal-to-Portal Act in that category.

Thirdly, if this were a real limitation of jurisdiction over particular subject matter, it would have simply controlled the forum (e. g., Federal or State Court) or the remedy (e. g., injunction or action at law) or the conditions under which relief could be granted (e. g., exhaustion of certain remedies). But where the definition of jurisdiction is an agency for eliminating *all* liability, it becomes no more than a subterfuge for the exercise of forbidden power.

Though the courts have declared that there is no vested right to a particular form of remedy, they have, with equal consistency, declared that "a vested right of action is property in the same sense in which tangible things are property" *Pritchard vs. Norton*, 16 Otto 124, 27 L. ed. 104; see also *Gibbes vs. Zimmerman*, 290 U. S. 326, 332, 54 S. Ct. 140, 78 L. ed. 342; 2 Cooley, Constitutional Limitations, 756, (and cases there cited).

In the case of *Richmond Mortgage and Loan Corp. vs. Wachovia Bank and Trust Company*, 300 U. S. 124, 57 S. Ct. 338, 81 L. ed. 552, it was held:

*Argument*

"The legislature may modify, limit, or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing, it may not deny all remedy or so circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right. The particular remedy existing at the date of the contract may be altogether abrogated if another equally effective for the enforcement of the obligation remains or is substituted for the one taken away."

In the present case no remedy is left to the plaintiffs. All avenues for securing relief—State and Federal—have been closed. What Congress has here done is precisely what the courts have said it cannot do within the framework of the Constitution.

In *Lockerty et al. v. Phillips, United States Attorney for District of New Jersey*, 63 S. Ct. 1019, 319 U. S. 182, this Court said:

"Appellants argue that the command of Section 204 (d) that 'no court, Federal, State, or Territorial, shall have jurisdiction or power to \* \* \* restrain, enjoin, or set aside \* \* \* any provision of this Act' extends beyond the mere denial of equitable relief by way of injunction, and withholds from all courts authority to pass upon the constitutionality of any provision of the Act or of any order or regulation under it. They insist that the phrase "set aside" is to be read broadly, as meaning that no court can declare unconstitutional any such provision, and that consequently the effect of the statute is to deny to those aggrieved, by statute or regulation, their day in court

*Argument*

to challenge its constitutionality. But the statute expressly excepts from this comment those remedies afforded by Section 204, including that of subsection (b), which gives to complainants a right to an injunction whenever they establish to the satisfaction of the Emergency Court that the regulation, order, or price schedule is 'not in accordance with law, or is arbitrary or capricious'. A construction of the statute which would deny all opportunity for judicial determination of an asserted constitutional right is not to be favored."

That which is forbidden to Congress because it invades the constitutional rights of the American people does not suddenly become permissible because it is enclosed in a wrapper labelled "jurisdictional control." The Supreme Court has said that

"\* \* \* Under the mere guise of realizing something within its powers, Congress may not lay a charge upon what is beyond them. Taxes are very real things, and statutes imposing them are estimated by practical results"

*Nichols vs. Coolidge*, 247 U. S. 531, 71 L. ed. 1124.

Jurisdiction, too, is a very real thing, and statutes affecting it are "estimated by practical results." As already seen, in *United States vs. Klein*, *supra*, the Court refused to sanction an effort on the part of Congress to exceed the bounds of its authority simply because it termed its action a measure to control the jurisdiction of courts. The Court looked to the reality behind the words.

All of the "great substantive powers of Congress" are "subject to the Fifth Amendment." So the Court said, in

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*Louisville Joint Stock Land Bank vs. Radford*, 295 U. S. 555, 589, 55 S. Ct. 854, 79 L. ed. 1593, 1604, citing the innumerable authorities establishing the proposition that the Fifth Amendment limits the exercise of even the war power, the power to tax, the power to regulate commerce and the power to exclude aliens. The power over the jurisdiction of the courts is no exception. There is no doctrine which varies the effectiveness and the meaning of deprivation of property or of due process of law on the basis of the particular congressional power to which the Fifth Amendment is applied. The destruction of plaintiffs' rights is, beyond doubt a deprivation of their property without due process of law. It is that whether accomplished under the commerce power, the bankruptcy power, the war power, or the power to control the jurisdiction of the courts.

*Argument*POINT II.

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**The Portal-to-Portal Act of 1947 is unconstitutional in that it deprives the plaintiffs herein of their property and vested rights without due process of law in violation of the Fifth Amendment.**

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No proposition has been more firmly established in our jurisprudence than that under the American constitutional system a Legislature cannot take what belongs to one man and arbitrarily give it over to another, cannot appropriate the property of any individual in the United States for the use of the Government without the payment of just compensation therefor, cannot reach into the past to upset transactions already completed and nullify rights already vested in accordance with law. The courts have unhesitatingly struck down attempted invasion of vested rights, and of attempted destruction by the Legislature of causes of action already accrued even where national policy and the immediate equities were on the side of the invading legislation. *Forbes Pioneer Boat Line vs. Everglades Drainage District*, 258 U. S. 338, 66 L. ed. 647, 42 S. Ct. 325; *Osborne vs. Nicholas*, 80 U. S. 654, 20 L. ed. 689; *Steamship Co. vs. Joliffe*, 69 U. S. 450, 17 L. ed. 805, 2 Wall. 450; *Hathorn vs. Calef*, 69 U. S. 10 2 Wall. 10, 17 L. ed. 776; *Ochiltree vs. Railroad*, 88 U. S. 249, 21 Wall. 249, 22 L. ed. 546; *Ettor vs. City of Tacoma*, 33 S. Ct. 428, 228 U. S. 148, 57 L. ed. 773; *Coombes vs. Getz*, 52 S. Ct. 435, 285 U. S. 434, 76 L. ed. 866.

*Argument*

Thus, in *Osborne vs. Nicholson*, 80 U. S. 654, 20 L. ed. 689, it was stated:

*"Rights acquired by a deed, will or contract of marriage, or other contract executed according to statutes subsequently repealed, subsist afterwards, as they were before, in all respects as if the statutes were still in force. This is a principle of universal jurisprudence. It is necessary to the repose and welfare of all communities. A different rule would shake the social fabric to its foundations and let in a flood tide of intolerable evils."* (Italics added).

So insistent was the Court upon adherence to this doctrine that it refused to interpret even the Thirteenth Amendment as having the effect of divesting the seller of a slave of his right to the purchase price in the absence of a specific provision to that effect in the Amendment, and it declined to permit its antipathy for the institution of slavery to govern its judgment as to the propriety of the legislative action thus taken. The Court said:

*"Whatever we may think of the institution of slavery viewed in the light of religion, morals, humanity, or a sound political economy—as the obligation here in question was valid when executed, sitting as a court of justice, we have no choice but to give it effect. We cannot regard it as differing in its legal efficiency from any other unexecuted contract to pay money made upon a sufficient consideration at the same time and place. Neither in the precedents and principles of the common law, nor in its associated system of equity jurisprudence, nor in the older system known as the*

### Argument

civil law, is there anything to warrant the result contended for by the defendants in error."

Again, in *Ettor vs. City of Tacoma*, 228 U. S. 148, 33 S. Ct. 428, an action had been brought under the terms of a statute of the State of Washington to recover compensation from the municipality for damage to the plaintiff's property resulting from street grading. While the action was pending the statute under which it was brought was repealed, and the suit was dismissed. The court however held:

"The obligation of the city was fixed. The plaintiffs in error had a claim which the city was as much under obligation to pay as for the labor employed to do the grading. It was a claim assignable and enforceable by a common law action for a breach of the statutory obligation."

"The necessary effect of the repealing act, as construed and applied by the court below, was to deprive the plaintiffs in error of any remedy to enforce the fixed liability of the city to make compensation. *This was to deprive the plaintiffs in error of a right which had vested before the repealing act, a right which was in every sense a property right. Nothing remained to be done to complete the plaintiff's right to compensation except the ascertainment of the amount of damage to their property. The right of the plaintiffs in error was fixed by the law in force when their property was damaged for public purposes, and the right so vested cannot be defeated by subsequent legislation.*" (Italics added.)

What was the nature and status of the rights of the plaintiffs herein at the time of the adoption of the Portal-

*Argument*

to-Portal Act of 1947? They had worked, they had expended their time and their energy, they had performed services for the defendant. Having done so, they had unquestionably earned the right to receive the compensation prescribed by the Fair Labor Standards Act for all of the time so devoted to the interest of the defendant, including compensation at one and one-half times the regular rate of pay for all hours worked in each week above the statutory maximum. This right had accrued at the time those activities had been performed in the interest of the defendant. The obligation of the defendant to pay was then complete. And suit had been instituted to recover what was clearly and unequivocally then due.

The existence of the defendant's obligation at the time of the passage of the Portal-to-Portal Act is not in dispute. Congress itself acknowledged that obligation and recognized its validity under existing law. For it adopted the Portal-to-Portal Act avowedly to avoid "the payment of such liabilities." Thus, it adopted a statute expressly for the purpose of enabling the defendants to avoid a recognized liability, for the purpose of removing all machinery which might enable plaintiffs to enforce their right, and for the purpose of nullifying the right to compensation for work and labor done.

It has never been held that a right or an obligation was removed from the protection of the Constitution merely by virtue of the fact that such obligation or such right would not have existed except for a particular statutory provision. Such a notion would repudiate the very basis for the doctrine of vested rights as enunciated by Justice Marshall—the maintenance of the supremacy of the law. For

*Argument*

there is no principle which places non-statutory law or private contracts on any higher plane than legislative enactment.

What the courts have considered of importance is whether the conditions precedent to the enforcement of the statutory right had been met, *whether anything had been done* by the claimants to perfect their right, whether consideration had been given or injury suffered as prescribed by the law. If those conditions were present, then the right vested, whether statutory or not. And the fact is that in almost all of the cases denying to a legislative body the power to nullify vested rights, the right was founded squarely upon the existence of a statute.

Thus, in *Ettor vs. Tacoma, supra*, we have seen that the right held to be constitutionally protected against retroactive legislative invasion was the right to sue a municipality under the terms of a State statute. *No right to do so would have existed in the absence of that statute.* Still the Court refused to allow the right to be retroactively vacated.

Similarly in *Coombes vs. Getz, supra*, a section of the California Constitution provided that directors of corporations should be liable to creditors for all moneys embezzled or misappropriated by corporate officers. While creditors who contracted with the corporation were suing a director to enforce their rights, that section making the director liable was repealed. There is no doubt that in the absence of the original provision in the California Constitution there would have been no liability on the part of the director, yet the Supreme Court, in permitting the creditor to recover despite the repealing statute, stated:

### Argument

“The right of this petitioner to enforce respondent’s liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was not purely statutory. *It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right. Ettor vs. Tacoma, supra; Pritchard vs. Norton, supra), to enforce his cause of action upon the contract. Ettor vs. Tacoma, supra; Hawthorne vs. Calef, supra; Steamship Co. vs. Joliffe, supra; Ochiltree vs. Railroad Co., supra; Harrison vs. Remington Paper Co., supra; Knickerbocker Trust Co. vs. Myers, supra.*” (Italics added).

Again, in *Steamship Co. vs. Joliffe*, 69 U. S. 450, 17 L. ed. 805, 2 Wall. 450, the Court held:

“The claim of the plaintiff below for half pilotage fees, resting upon a transaction regarded by law as quasi contract, there is no just ground for the position that it fell with the repeal of the statute under which the transaction was had. *When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a*

### Argument

*vested right which stands independent of the statute. And such is the position of the claim of the plaintiff below in the present action; the pilotage services had been tendered by him; his claim to the compensation prescribed by the statute was then perfect, and the liability of the master or owner of the vessel had become fixed."* (Italics added.)

In the same way, where under the terms of an Act of Congress members of the Choctaw and Chickasaw tribes who relinquished their rights to communal lands were given individual plots of a given number of acres as their private property and were granted a 21-year tax exemption provided that the land was not alienated, the Supreme Court of the United States held that those who accepted the plots under those conditions and gave the consideration prescribed by the statute, thereafter had a vested right in the tax exemption and the right could not be divested by subsequent legislation. *Choate vs. Trapp*, 224 U. S. 665, 32 S. Ct. 565, 56 L. ed. 941. *The right to the tax exemption vested exclusively upon the statute*, but that fact did not deter the Court from asserting its inviolability.

In *Osborne vs. Nicholson*, *supra*, we have seen that the Court specifically referred to the vesting of a right *under a statute*. And likewise in *Hathorn vs. Calef*, 69 U.S. 10 17 L. ed. 776 2 Wall. 10, and *National Surety Corp. vs. Wunderlich*, 111 F. (2d) 622 (8 C. C. A. 1940), rights were protected against divestment by retroactive legislation although in each case they were founded exclusively upon statute. If we examine the cases in which the Courts have applied the principle that statutory rights do not vest, that they may be defeated by a repeal of the statute which

*Argument*

created them, we shall clearly see that the principle has application in entirely different circumstances from those here involved.

Where a right based upon a statute is purely executory, is entirely conditioned upon an eventuality which has not materialized at the time that the statute is repealed, such repeal and the removal of the right have been held to be valid. Thus, in *Pearsall vs. Great Northern Ry. Co.*, 161 U. S. 646, 16 S. Ct. 705, 40 L. ed. 838, it appeared that the Legislature had adopted a statute removing the power of a corporation, originally granted by its charter, to consolidate with other lines. Thereafter the corporation sought to engage in a consolidation and was prevented from doing so by the operation of that later statute. The Court held that under these circumstances no vested rights had been disturbed since the power to consolidate had not been exercised at the time the repealing Act was passed, but followed if the consolidation had already taken place in accordance with the earlier grant of power and if the repealing Act had been applied so as to invalidate a consolidation so completed prior to its passage.

In the present case the plaintiffs involved have performed all of the acts necessary to establish their right to recovery under the Fair Labor Standards Act. They have contributed their time and their energy to their employer for his gain. They have engaged in activities which this Court has held entitles them to the statutory rate of compensation. *Anderson, et al. vs. Mt. Clemens Pottery Co.*, 308 U.S. 680, 66 Supreme Ct. 1187. They have earned the right to that compensation. Just as in *Ettor vs. Tacoma*, *supra*, when the "amending" statute was here passed,

*Argument*

“nothing remained to be done to complete the plaintiff’s right to compensation except the ascertainment of the amount of damage.”

Never has this Court approved a doctrine which would allow the destruction of a right such as is here involved, a right which is neither a mere expectancy, nor a mere contingency, but a right for compensation for services rendered and damages inflicted in violation of law. Such a doctrine would not be an exception to the rule against the protection of vested rights. It would be a subversion of the principle itself. It would be a negation of the *Ettor*, *Coombes*, *Forbes Pioneer Boat Line*, *Joliffe (supra)*, and all other cases placing rights vested under a statute within the protection of the Constitution.

The 80th Congress possessed no constitutional veto power over its predecessors’ actions under which certain rights have become vested. Yet that is precisely what the 80th Congress has sought to do here. It has sought to upset for the past that which a previous Congress insisted should be done. It has sought to veto the actions of its predecessors. If such a result can be accomplished, then rights and obligations will never be secure. The evil which Justice Rutledge saw in *Schneiderman vs. United States*, 320 U.S. 118, 63 S. Ct. 1333, 87 L. ed. 1796, in the lack of finality in the judgment of a Court with regard to a particular set of facts, is present in the lack of finality in the judgment of a Congress upon the basis of the facts it considers significant during the period in which it retains power. Justice Rutledge said:

“The effective cancellation (of naturalization) is to nullify the judgment of admission. \* \* \* That it is

*Argument*

a judgment, and one of at least a coordinate court, which the cancellation proceedings attacks and seeks to overthrow, requires this much at least, that solemn decrees may not be lightly overturned and that citizens may not be deprived of their status merely because one judge views their political and other principles with a more critical eye or a different slant, however, honestly and seriously, than another."

It is equally true that a declaration as to rights and obligations by one Congress during the period in which it had power to declare those rights and obligations should not be upset by another Congress reaching back to that original period. There would, under those circumstances, be no stability in law. Persons acting in accordance with the rules laid down by one Congress might find themselves at a serious disadvantage not because they violated but rather because they obeyed the law. They might find that a later legislative body has made the conduct which had theretofore been considered legal, illegal for the precise period during which this legality had been appropriately declared.

The Fair Labor Standards Act was enacted in 1938. Employers paid their employees in accordance with their interpretation of the Act. In June of 1946, this Court interpreted the Act of Congress and stated that the words "work week" under the Act, should include all time during which an employee is necessarily required to be on the employer's premises on duty or at a prescribed work place. This is the famous Portal-to-Portal case, and is reported as *Anderson, et al. vs. Mt. Clemens Pottery Co., supra*.

*Argument*

The Administrator and the Courts repeatedly and consistently enunciated the doctrine that working time under the Fair Labor Standards Act was in no sense to be limited to what was expressly provided in contracts or what was done under past custom or practice. In a series of three decisions, *Tennessee Coal & Iron Co. vs. Muscoda Local 123*, 321 U.S. 590, 64 S. Ct. 698; *Jewell Ridge Coal Corp. vs. Local 6167, United Mine Workers of America*, 325 U.S. 161, 65 S. Ct. 1063; *Anderson vs. Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S. Ct. 1187, this Court sustained the interpretation which had theretofore been given to the Act and held that all time worked should be compensable time.

It is a well known proposition of law that the applicable substantive law of the State or the United States in force on the date of the making of a contract, becomes part and parcel thereof just as clearly and distinctly as though the law were written into the contract. It is also true that if such law subsequently enacted announces a public policy, that law becomes applicable to the existing contract: *Compania De Inversiones I. vs. Industrial Mortgage Bank*, 198 NE 617, 69 N.Y. 22.

In *Home Building & Loan Assn. vs. Blaisdell*, 290 U.S. 398, 435, 54 Supreme Court, 231-239, it is held that:

"Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order."

To the same effect in *Gelfert vs. National City Bank of New York*, 313 U.S. 221, 61 Supreme Court, 898-901.

*Argument*

In *Malone vs. Hayden*, also known as *Teachers Tenure Act Cases*, 329 Pa. 213, 197 Atl. 344, the Supreme Court of Pennsylvania applied the same principle to contracts of teachers, and at page 353 referred to the various decisions of the Federal Supreme Court on the subject quoting from *Home Building & Loan Assn. vs. Blaisdell*, *supra*.

So absolute is the right to overtime pay and to wages as set out in the Act, that this Court in a number of decisions explicitly decided that a claim for the same cannot be released or compromised: In *Brooklyn Savings Bank vs. O'Neil*, 324 U.S. 697, 65 Supreme Court 895, 89 L. ed. 1296; it was held that an employee's written waiver of his right to liquidate damages under the Fair Labor Standards Act did not bar a subsequent action to recover such liquidated damages, and also that a statutory right conferred on a private party but not affecting the public interest may not be waived or released as such waiver or release contravenes the statutory policy; where a private right is granted in the public interest to effectuate the public waiver of a right so changed or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate (page 901).

*D. A. Schulte Inc. vs. Gangi*, 328 U.S. 108, 66 Supreme Court, 925, 928.

In *Northwestern Yeast Co. v. Broutin*, 133 F. 2d 628, at pages 630 and 631, the court stated that the contract between the employer and employee contained the provisions required by law and as such became part and parcel of the contract. Any remedy to which employee was entitled, was

*Argument*

under the contract itself and not by suit based solely on the act.

Again in *Crabb vs. Welden Bros.*, 164 F. 2d, 797 at 802, the court in finding that the provisions of the Fair Labor Standards Act is part of every contract of employment said:

“The Fair Labor Standards Act presupposes a contract of employment and in that sense an action to recover overtime is an action on contract. *Republic Pictures Corp. v. Kappler*, supra; *Northwestern Yeast Co. v. Broutin*, 6 Cir., 133 F. 2d, 628. In order to recover under the Fair Labor Standards Act the employee must have been engaged in interstate commerce. When so employed that act becomes a part of his contract, but if not so employed that act has no bearing upon his contract.”

It is true that the Courts have repeatedly held that there is no vested right to a particular form of remedy. In such cases as *Gibbes vs. Zimmerman*, 290 U.S. 326, 54 S. Ct. 140, 78 L. ed. 342; *Home Building & Loan Assoc. vs. Blaisdell*, 290 U.S. 398, 54 S. Ct. 231, 78 L. ed. 413; *Ex Parte McCardle*, 7 Wall. 506, 19 L. ed. 264; *Baltimore and Poto-mac R. R. Co. vs. Grant*, 8 Otto 398, 25 L. ed. 231; *Richmond Mortgage & Loan Corp. vs. Wachovia Bank & Trust Co.*, 300 U.S. 124, 57 S. Ct. 338, 81 L. ed. 552, and *Norman vs. Baltimore and Ohio R. R. Co.*, 294 U.S. 240, 55 S. Ct. 407, 79 L. ed. 885. But in all such cases, the Courts based their determination on the fact that the new statute left the basic right unimpaired. *The form of the remedy was altered but some remedy remained.*

*Argument*

Here, however, the Portal-to-Portal Act of 1947 destroys the right. It leaves no remedy, no means at all for securing the compensation due to the plaintiffs. It was designed precisely to wipe out the "liability". It is accordingly, as invalid as was the statute considered by the Court in *Louisville Joint Stock Land Bank vs. Radford*, 295 U.S. 555, 55 S. Ct. 854, 79 L. ed. 1593, where it was found that all effective remedy was destroyed.

In *Graham vs. Goodcell*, 282 U.S. 409, 51 S. Ct. 186, 75 L. ed. 415, the Court distinguished the vested interest cases from a case in which a retroactive statute did not invade any rights but merely cured an administrative defect in favor of the Government. A suit was brought to recover taxes illegally collected because they were barred by the statute of limitations. An Act was passed removing the right to recover in those cases while the suit was pending. The delay which had postponed the collection of the taxes beyond the statutory period had occurred because the taxpayers had been negotiating concerning their payment with the Treasury Department. The Treasury Department, in turn, had mistakenly assumed that the Statute of Limitations would not apply under those circumstances.

The Court held that the subsequent act of Congress was valid and dismissed the suit saying:

"The question is whether these circumstances remove the case from the operation of the *general rule that it is not consistent with due process to take away from a private party a right to recover the amount that is due when the act is passed*. *Pacific Mail S.S. Co. vs. Joliffe*, 2 Wall. 450, 457, 458, 17 L. ed. 805,

*Argument*

807; *Ettor vs. Tacoma*, 228 U.S. 148, 156, 57, L. ed. 773, 778, 33 S. Ct. 428; *Forbes Pioneer Boat Line vs. Everglades Drainage Dist.*, 258 U.S. 338, 340, 66 L. ed. 647, 649, 42 S. Ct. 325."

There is no merit in the argument that the compensation sought by the plaintiffs is in the nature of a penalty. On the contrary, what the plaintiffs are seeking here is a just return for the labor they have expended in behalf of the defendant and compensation for the injury they have suffered as a result of the defendant's failure promptly to meet its just liabilities. In *Brooklyn Savings Bank vs. O'Neil*, 324 U.S. 697, 707, 65 S. Ct. 895, 89 L. ed. 1296, 1309, this Court has laid to rest any suggestion that even the liquidated damage provision of the Fair Labor Standards Act is in the nature of a penalty, unequivocally stating:

"We have previously held that the *liquidated damage provision is not penal in its nature* but constitutes compensation for the retention of a workman's pay which might result in damages too obscure and difficult of proof for estimate other than by liquidated damages. *Overnight Motor Transp. Co. vs. Missel*, 316 U.S. 572, 86 L. ed. 1682, 62 S. Ct. 1216.

*Argument*POINT III.

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**The Congressional finding of a national "emergency" cannot serve to validate the Portal-to-Portal Act as a proper use of the power to regulate commerce.**

In Section 1 of the Portal-to-Portal Act, Congress stated that it "finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this act be enacted." Thus Congress sought to justify its action in adopting this drastic legislation by making certain "findings" indicating the existence of an "emergency".

This so-called "emergency" was the result of the excessive newspaper publicity given to the Seven Billion Dollar figure as the estimated total amount of all claims filed in federal courts. These claims were said to have been precipitated by the decision in the case of *Anderson vs. Mt. Clemens Pottery Co.*, *supra*; yet the plaintiffs in that case failed to recover anything because of the de minimus rule. This rule may also result in similar findings in some or all of the portal-to-portal cases now pending.

The total amount sued for in each case is merely an estimate, usually the maximum figure plaintiffs hope to recover, and is never proof of the amount of the debt or liability. It has been said that approximately no more than 5 percent of the amount claimed in these various Complaints is now recoverable in said portal-to-portal suits.

### Argument

The "emergency" was thus a mere fiction—a product of vivid imagination. But even assuming an "emergency" existed, such emergency could never create a power which theretofore did not exist. Congress, by a mere finding of an "emergency" cannot avoid the constitutional limitations on its authority. *Home Building & Loan Association vs. Blaisdell*, 290 U.S. 398, 426, 54 S. Ct. 231 78 L. ed. 413, 422; *Wilson vs. New*, 243 U.S. 332, 348, 37 S. Ct. 298, 61 L. ed. 755, 773; *Louisville Joint Stock Land Bank vs. Radford*, 295 U.S. 555, 55 S. Ct. 854, 79 L. ed. 1593; *Terry vs. Anderson*, 95 U.S. 628, 24 L. ed. 365; *Ex parte Milligan*, 4 Wall 2, 18 L. ed. 281.

These cases clearly establish the proposition that, no matter how pressing the emergency, no matter how extreme the requirements of the Nation may be, Congress may not exercise an authority which is forbidden to it by the Constitution. And in these cases, the Court was faced with legislative efforts to deal with situations far more fraught with danger to the public interest than are presented by the congressional recitals in the Portal-to-Portal Act of 1947, even if those recitals were accepted at their full face value.

The Court was unequivocal in *Louisville Joint Stock Land Bank vs. Radford*, *supra*, when it said that "the Fifth Amendment commands that *however great the nations need*, private property shall not thus be taken *even for a wholly public use* without just compensation." (Italics added.) It was unequivocal in *Terry vs. Anderson*, 95 U.S. 628, 24 L. ed. 365, when it held that remedial legislation, but not the impairment of the obligation of a contract, the destruction of a vested right was called for in a situation

*Argument*

where "the business interests of the entire people of the State had been overwhelmed by a calamity common to all", where "society demanded that extraordinary efforts be made to get rid of old embarrassments and permit a reorganization upon the basis of a new order of things."

But nowhere was this principle more forcefully stated than in *Ex parte Milligan, supra*. There, it was held that not even the emergency of war for the survival of the Union could justify the invasion of the rights protected by the Constitution. The Court solemnly declared:

"Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. *No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism \* \* \*.*" (Italics added.)

During the course of the Congressional debates, sponsors of the Portal-to-Portal Act sought refuge in the deci-

*Argument*

sion of the Supreme Court in the so-called "gold clause" cases, particularly *Norman vs. Baltimore & Ohio R. R. Co.*, 294 U.S. 240, 55 S. Ct. 407, 79 L. ed. 885. It was asserted that that decision stands as authority for the proposition that an emergency justifies retroactive legislation vacating vested rights. The Court there upheld the constitutionality of the invalidation by Congressional Act of the so-called "gold clauses", in private contracts, holding that Congress had the exclusive power to regulate the monetary system, that the regulation it had imposed was a reasonable one, simply altering the conditions under which the liability could be enforced without impairing the liability itself, and that no private contract could operate to restrict the congressional power in its lawful sphere.

Similarly, in *Louisville & Nashville Railroad Company vs. Mottley*, 219 U.S. 467, 31 S. Ct. 265, 55 L. ed. 297, a release had been executed by an individual to a railroad company after an accident causing damage to the individual. The release was granted in consideration of a free pass for transportation on the railroad given to the defendant and his wife for the duration of their lives. After the release had been made and the free transportation has been granted for a number of years, an Act of Congress was passed making free passes illegal. The railroad then refused to reissue a pass and a suit demanding specific performance was instituted.

The Court here held that the legislation constitutionally invalidated the provisions of the release on the ground that a private contract could not stand in the way of the exercise by Congress of its constitutional power.

*Argument*

But the Act involved in said case was not retrospective, and it has never been cited as authority for the proposition that Congress can wipe out vested rights through retro-active legislation. The Act applied to future acts, i.e., the granting of passes in the future. Another distinguishing feature is that the Portal-to-Portal Act leaves our plaintiffs with no remedy whatever by which they could enforce their claims of payment for services already rendered before its passage. Whereas, in the Mottley case, *supra*, the plaintiffs could still avail themselves of other remedies in seeking redress against the railroad company for the personal injuries they sustained, the basic right remaining unimpaired. The public policy behind the Act involved in the said Mottley case was to avoid discriminatory and unequal railroad fare rates, while the only public policy behind the Portal-to-Portal Act is that it would harm industry if it must pay for services it had already received.

Finally, in *Philadelphia B. & W. R. Co. vs. Schubert*, 224 U.S. 603, 32 S. Ct. 589, 56 L. ed. 911, the Court in sustaining an Employer's Liability Act against the contention that it could not invalidate a private contract providing for certain payments to an employee in lieu of any other remedy for an employer's liability, said:

"Nor can the further contention be sustained that, if so construed, the section is invalid. The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the territories to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution

*Argument*

of its policy. To subordinate the exercise of the Federal authority to the *continuing operation* of previous contracts would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals, and to withdraw from the control of Congress so much of the field as they might choose, by prophetic discernment, to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, *Congress should be able to establish uniform rules, immediately obligatory, which, as to future action, should transcend all inconsistent provisions. Prior arrangements were necessarily subject to this paramount authority.*" (Italics added.)

Is it not obvious that these cases, far from militating against plaintiffs' present claim, serve to fortify their position? The plaintiffs here are not arguing against the legislative destruction of obligations which became due *after* the passage of the Portal-to-Portal Act. Plaintiffs here are complaining of the destruction of obligations *already due and payable*, of "debts already contracted". Plaintiffs are here complaining, not of a limitation of liability by reason of what might take place "*after*" Congress has acted. They are complaining of the destruction of a liability complete and due *before* the action of Congress took place.

There is not here involved a contract between private parties which stands in the way of an Act of Congress, and plaintiffs are claiming no vested right in the ability to do, in the future, after Congress acts, what they did before.

*Argument*

And the doctrine, therefore, that Congress may, in appropriate circumstances, take action in spite of the fact that its action interfere with the obligation of private contracts, has no relation to the instant problem at all.

*Argument*POINT IV.

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**The Portal-to-Portal Act of 1947 represents an attempt by Congress to exercise judicial power in violation of Article III of the Constitution of the United States: It thus deprives the plaintiffs of their property without due process of law in contravention of the Fifth Amendment.**

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The principle of the separation of powers as enunciated in the Constitution, the endowment of Congress with exclusive legislative power, of the President with exclusive executive power, of the Courts with exclusive judicial power, the prohibition against the encroachment of one branch upon the sphere reserved for each of the others are the very heart and core of our constitutional system.

This Court has unhesitatingly struck down attempts on the part of the legislature to invade the judicial domain, to exercise power specifically forbidden to it by our basic law. *Kilbourn vs. Thompson*, 13 Otto 168, 26 L. ed. 377; *Ogden vs. Blackledge*, 2 Cranch 272, 2 L. ed. 276; *Reynolds vs. McArthur*, 2 Peters 417, 7 L. ed. 470; *United States vs. Klein*, 13 Wall. 128, 20 L. ed. 519; *Baltimore & Ohio R. R. Co. vs. United States*, 298 U.S. 349, 56 S. Ct. 797, 80 L. ed. 1209.

And for the same reason those provisions of the Portal-to-Portal Act of 1947 which purport to destroy the present cause of action must likewise be struck down. In enacting

*Argument*

those provisions, Congress has unquestionably yielded to "those powerful and growing temptations \* \* \* to overstep the just boundaries of (its) own department and enter upon the domain of the others." *Kilbourn vs. Thompson*, *supra*.

What is the judicial power which Congress is forbidden to exercise, which is reserved exclusively to Courts? What is the essence of the legislative power which is within the exclusive province of Congress under the Constitution? How have the "lines which separate and divide these departments" been "broadly and clearly defined?"

In *Marbury vs. Madison*, 1 Cranch, 137, Justice Marshall answered:

"It is emphatically the province and duty of the judicial department to say what the law is."

And in *Webster vs. Cooper*, 55 U.S. 488, 14 L. ed. 510, the judicial power was thus described:

"The exposition of both (statute and constitution) belongs to the judicial department of the government, and its decision is final, and binding upon all other departments of that government, and upon the people themselves, until they see fit to change their Constitution. \* \* \*"

Mr. Justice Field, dissenting in the *Sinking Fund Cases*, 25 L. ed., at 516, emphatically declared (and his opinion in this regard was not disputed by the majority):

"To declare that one of two contracting parties is entitled, under the contract between them, to the payment of a greater sum than is admitted to be payable,

*Argument*

or to other and greater security than that given, is not a legislative function. It is judicial action; it is the exercise of judicial power; and all such power, with respect to any transaction arising under the laws of the United States is vested by the Constitution in the Courts of the Country."

And Justice Holmes, in two opinions characterized by his usual incisiveness, epitomized the basic distinction between the judicial and the legislative power. First, in upholding a statute against an attack that it represented a legislative invasion of the judicial domain, he said:

"The statute did not deal with the past or purport to grant or refuse a new trial in a case or cases then pending, but performed the proper legislative function of laying down a rule for the future in a matter as to which it had authority to lay down rules." (*James vs. Appel*, 192 U.S. 129, 48 L. ed. 377).

Then in *Prentiss vs. Atlantic Coastline Co.*, 211 U.S. 210, 226, 29 S. Ct. 67, 53 L. ed. 150, 158, he stated his conclusion in the following terms:

"A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. This is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power."

Here, then, is the test to be applied. Does the action of Congress in the passage of the Portal-to-Portal Act of 1947

*Argument*

look to the future and change existing conditions "by making a new rule to apply thereafter to all or some part of those subject to its power", or does it, on the contrary, declare and enforce liabilities as they stand on facts and under laws existing at the time of the adoption of that legislation? Does it define a proper course of conduct for the future, or does it pass judgment on and prescribe a new rule for decisions in pending cases?

Whatever might be said of the portions of the Portal-to-Portal Act which prescribe rules for the future, its provisions for retroactive operations—the provisions with which we are concerned here—fall clearly under the head of "judicial action" as thus defined. These provisions "declare liabilities \* \* \* on present or past facts"; they say "what the law is"—and what the law was as to liability long before they were in effect; they determine the sum payable to plaintiffs by defendant under the employment relationship in existence prior to their adoption. These provisions operate in precisely the sphere in which the Courts can take—and have taken—action.

And fortunately, Congress did not leave its object to speculation. It stated its design and purpose in the opening paragraph of the Statute itself.

The 80th Congress was dissatisfied with the result arrived at by the Court in the *Mt. Clemens case, supra*. It felt that the judicial interpretation of the rights and liabilities created by the Fair Labor Standards Act would be harmful and was improper. It put its criticism of that judicial interpretation in Section 1 of the Act where it stated:

*Argument*

"The Congress hereby finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long established customs, practices and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation."

Congress thus chose to declare that the liabilities enunciated by this Court should not be enforced. It was in order to avoid the normal and proper effect of the Court's determination in pending cases that Congress avowedly adopted the Portal-to-Portal Act. It is equally clear that Congress has presumed to change those decisions, to nullify them, to interfere with the declaration and enforcement by the Court of liabilities as they stand on present or past facts. The Congress did not, in passing the Portal-to-Portal Act, look entirely to the future in order to change conditions and make a new rule to be applied thereafter. On the contrary, it sought to change a rule already adopted and to change it for a period during which it had no competence whatsoever.

It was said in *United States vs. O'Grady's Executors*, 89 United States 641, 22 Wall. 641, 22 L. ed. 772:

"Judicial jurisdiction implies the power to hear and determine a cause and, inasmuch as the Constitution does not contemplate that there shall be more than one Supreme Court, it is quite clear that Congress cannot subject the judgments of the Supreme Court to re-examination and revision of any other tribunal or any other department of the Government."

*Argument*

And again Cooley, at page 190, Volume I of his Constitutional Limitations, states the rule as follows:

“But the legislative action cannot be made to retroact upon past controversies and to reverse decisions which the court, in the exercise of their undoubted authority, have made; for this would not only be the exercise in the most objectionable and offensive form, for the legislature would in fact act as a court of review to which parties might appeal when dissatisfied with rulings of the court.”

In the Portal-to-Portal Act, we are faced more clearly than at any time in American Constitutional history with precisely such an effort on the part of Congress “to act as a court of review to which parties may appeal when dissatisfied with rulings of the Court,” to “subject the judgments of the Supreme Court to re-examination and revision” by Congress itself.

Once before Congress attempted a blatant invasion of the prerogatives of the judicial department. In April of 1870, the Supreme Court rendered its decision in *United States vs. Padelford*, 9 Wall., 531, holding there that a participant in the rebellion against the United States was entitled to recover from the Treasury of the United States the value of his property seized and sold during the course of the Civil War, provided he had taken a certain oath under the terms of a presidential pardon. Congress was dissatisfied with this decision, and shortly after it was announced, sought to avoid its effect. It accordingly adopted legislation which purported to deprive the courts of jurisdiction in a case where the claim was based upon

*Argument*

the taking of the oath discussed in the *Padelford case*. In effect the enforcement of the legislation would have required the application of a rule to an existing set of facts contrary to that which the Court had declared was appropriate.

The Court unhesitatingly declared that such a statute was an invasion of the judicial power, that the deprivation of jurisdiction was a subterfuge for directing a decision of the Court on an existing set of facts contrary to that which otherwise would have been made. If the statute had really been designed to control the jurisdiction of the Court of Claims and of the Supreme Court it would have been valid. "But", said the court (in *United States vs. Klein*, 13 Wall., 128, 20 L. ed. 519):

" \* \* \* the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have. The proviso declares that pardons shall not be considered by this court on appeal. We had already decided that it was our duty to consider them and give them effect, in cases like the present, as equivalent to proof of loyalty \* \* \*

"It is evident from this statement that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending prescribed by Congress. The court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

*Argument*

"It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

"The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court.

"We are directed to dismiss the appeal if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the Legislature may prescribe rules of decision to the Judicial Department of the Government in cases pending before it? \* \* \*

"We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power."

The analogy to the situation presented in the present case is striking. Here, too, the Congress has purported to pass an Act withholding jurisdiction from the courts "as a means to an end." Here, too, "the great and controlling purpose" of Congress is to deny to the provisions of the Fair Labor Standards Act of 1938 "the effect which this court had adjudged (it) to have." Here, too, "the denial of jurisdiction to this court \* \* \* is founded solely on the application of a rule of decision, in causes pending pre-

*Argument*

scribed by Congress." Here, too, the Court cannot give effect to the Congressional action "without allowing that the Legislature may prescribe rules of decision to the judicial department of the government in cases pending before it."

Indeed the only difference between the situation in the *Klein* case and that now before us is that Congress in passing the Portal-to-Portal Act has gone much farther than did the Congress of 1871. For here Congress has baldly asserted its intention to invalidate the decision of the Supreme Court, has unequivocally declared its intention to substitute a new rule of decision for that judicially announced. Here there is no subtlety, no innuendo. If in the *Klein* case Congress "passed the limit which separates the legislative from the judicial power" then here it has forgotten that limit altogether.

Therefore, the writs of certiorari prayed for at Nos. 320, 321, 322, and 323 of October Term, 1948 should be granted.

Respectfully submitted,  
CHARLES J. MARGIOTTI,  
*Amicus Curiae.*